S.B. Civil Revision Petition No.501/2006

Trilok.
vs.
Sayari and others.

Date : 23.11.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. PS Rathore, for the petitioner.

- - - - -

Heard learned counsel for the petitioner.

The petitioner has challenged the impugned order dated 5.10.2006 by which the trial court dismissed the application of the petitioner filed under Order 7 Rule 11 CPC.

As per the facts of the case, the plaintiff filed suit for partition stating therein that the valuation of the suit property is Rs.25,000/-. The defendant/petitioner submitted that the market value of the property is Rs.1 lakh. The Court framed issue no.4 with respect to the suit valuation. In the trial court, the plaintiff led evidence and the case was fixed for the evidence of the defendant. The defendant submitted application under Order 7 Rule 11 CPC and prayed that

the plaintiff's suit may be rejected under Order 7 Rule 11 CPC on the ground that the Court below has no jurisdiction to try the suit because of the reason that the property involved in the suit is beyond the pecuniary jurisdiction of the court below.

The trial court dismissed the application under Order 7 Rule 11 CPC. Hence, this revision petition.

Learned counsel for the petitioner submits that the court below at least should have decided issue no.4 first if the trial court was not convinced for rejection of plaint under Order 7 Rule 11 CPC.

In the light of the facts mentioned above, the application appears to be misconceived and has been filed to delay the court proceedings only and the court below has not imposed any costs. Not only this but the petitioner has challenged the order of the trial court rejecting the application filed under Order 7 Rule 11 CPC by preferring this revision petition.

Learned counsel for the petitioner relies upon the judgment of this Court delivered in the case of Smt. Kamla and another vs. Shri Ramesh Chandra and others reported in 2002(4) WLC (Raj.) 321 wherein it has been held that the issue of undervaluation of the suit and deficiency of court fee must be decided as preliminary issue at preliminary stage.

In the judgment relied upon by learned counsel for the petitioner itself, it is clearly mentioned that the issue can be decided at preliminary stage and admittedly, it is not the case at preliminary stage and otherwise also, there was no reason for deciding the issue at this stage so as to result in multiplicity of the findings by challenging that issue by any of the party and by that, deferring the decision of the suit itself.

Accordingly, this revision petition, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya